IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 29 OF 2003.

1. Hanumanth Chauvan
2. Eshwar Chauvan
   Central Jail, Aguada. ... Appellants.

Versus

State. ... Respondent.

Mr. S.G. Dessai, Senior Advocate with Mr. R. Prabhudessai, Advocate for the Appellants.

Mr. S.N. Sardessai, Public Prosecutor for the Respondent/State.

Coram : P.V. HARDAS AND
D.G. KARNIK, JJ.

Date : 16th April 2004.

ORAL JUDGMENT (PER HARDAS, J.)

The appellants/original accused nos. 1 and 2, being aggrieved by the Judgment of the District and Sessions Judge, South Goa, Margao, dated 20th November 2002, in Sessions Case No. 1 of 2001, convicting the appellants for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for life, have filed the present appeal challenging the aforesaid conviction and sentence.

2. The facts, in brief, as are necessary for the decision of this appeal, are set out hereunder:-

P.W.12 P.S.I. Ganpat Onskar was attached to the Margao Police Station. On 28th May 2000, he was a

day officer and at about 5.10 p.m. he received a wireless message from the police control room informing him that one Dhananjay was lying near the house of Babu Naik and it was a case of stabbing. P.W.12 P.S.I. Onskar alongwith constables proceeded to the scene, which was at Monte Dongor, at about 5.20 p.m.. On reaching the scene of offence, he saw a crowd of about 50 persons standing there. He noticed the body of Dhananjay Rathod. On inquiring with the crowd, the names of the appellants transpired as the perpetrators of the crime and, therefore, P.W.12 P.S.I. Onskar proceeded in search of the appellants. He found both the appellants in the bushes at Monte Dongor itself. He brought the appellants to the Police Station and lodged his complaint at Exhibit 45. P.W.14 P.I. Mohan Naik, who was in-charge of the Margao Town Police Station, registered the offence on the basis of the complaint, at Exhibit 45, lodged by P.W.12 P.S.I. Onskar. He arrested the appellants and executed the arrest panchanama, at Exhibit 14 in the presence of P.W.1 John Rego. The wearing apparel of the accused came to be attached. From the appellant no. 1 a green colour pant and a orange colour T-shirt came to be attached. The wearing apparel of appellant no. 2 consisting of a brown colour full pant and a white colour T-shirt came to be attached. The clothes of the appellant no. 1 so attached are at Exhibit 1 and the clothes of appellant

no. 2 so attached are at Exhibit 2. The arrest panchanama was effected vide Exhibit 14, at 6.10 p.m., on 28th May 2000. The arrest panchanama, at Exhibit 14, states that the T-shirt of both the appellants were stained with blood.

3. Appellant No. 1 Hanumanth was interrogated by P.W.14 P.I. Mohan Naik in the presence of P.W.6 Arvind Tenkse and he is alleged to have volunteered to discover the knife, which was hidden in the bushes. Accordingly, the statement of accused no. 1 Hanumanth was recorded, at Exhibit 30 and accused no. 2 had taken the police and the panch to a hilly area and after searching in the bushes for about 20 minutes, produced a knife, which came to be attached. Some blood stains were noticed on the blade of the knife. The said knife is at Exhibit 3. Meanwhile the scene of offence panchanama, at Exhibit 18, had been recorded in the presence of P.W.3 Lino Lima and the inquest panchanama, at Exhibit 16, was recorded in the presence of P.W.2 Gilson Baptista. The dead body was referred for post-mortem examination and the post-mortem was conducted by P.W.10 Dr. Avinash Pujari and his report is at Exhibit 38. Dr. Pujari noticed the following injuries:-

> " (1) Contused abrasion with diffused margins red and fresh of 2.5 x 1.5 x 0.5 cms. on the right side face on the outer end of right eyebrow, 4 cms.

in front of right ear pinna.

(2) Three abrasions red and fresh 0.5 x 0.5 each over an area of 2 x 2 cms. on right side forehead above eyebrow.

(3) Abrasion red and fresh 3 x 2 cms. on the left side of head, 4 cms. from midline, 4 cms. above left eyebrows.

(4) Abrasion red and fresh 7 x 3.5 cms. on the left side face, 3 cms. from nostril in front of left ear pinna.

(5) Incised wound with both ends acute, clean cut with regular margins red and fresh 1.5 x 0.5 x 0.5 cms. on the left side face horizontal just in front of left ear lobule.

(6) Incised wound both ends acute, clean cut with regular margins red and fresh, 1 x 0.5 x 0.5 cms. on the left side forehead, horizontal at outer end of the eyebrow 6 cms. in front of left ear pinna.

(7) Three incised wounds of the similar characteristics as injuries nos. 5 and 6 of 3 x 1 x 0.5 cms. to 2.5 x 1 x 0.5 cms. over an area of 6 x 5 cms. on the left side back of the head, 4 cms. behind left ear pinna, 2.5 cms. from midline oblique, back to front downwards laterally.

(8) Incised wound, sharp clean cut regular margins, both angles acute, red and fresh, of 1.5 x 0.8 x 0.5 cms. on front left side chest, upper part 2 cms. from midline, 10 cms. above left nipple, oblique upper end outwards and laterally tailing and 2 cms. at lower end medially.

(9) Incised wound with sharp clean cut regular margins, both angles acute, red and fresh, 1 x 0.5 x 0.5 cms. over the areola of left nipple, above tip horizontal with evidence of blood infiltration in surrounding tissues.

(10) Incised stab wound eliptical/spindle shaped with margins cut and clean cut regular well

defined, both angles acute of 1.5 x 1 cms. (width at maximum in centre) cavity deep on the front of left side chest, 2 cms. from midline and 8 cms. below and medial to left nipple, almost horizontal.

(11) Incised stab wound similar to injury no. 10 of 1.5 x 1 (width at maximum in centre) cavity deep on the front chest, right side 2.5 cms. away from midline, 7.5 cms. below and medial to right nipple, almost horizontal.

(12) Incised wound, clean cut regular with sharp margins both angles acute of 1 x 0.5 x 0.5 cms. on front of left side chest, 0.5 cms above external injury no. 10.

(13) Incised wound of description of injury no. 12 of 3 x 1.5 x 0.5 cms. on the left elbow, back between tip of elbow and medial epicondyle, downwards and outwards.

(14) Abrasion red fresh in colour of 4 x 0.5 cms. on the front of left thigh, midway, vertical 18.5 cms. below anterior superior iliac spine.

(15) Abrasion red and fresh of 3 x 0.5 x 1 cms. on right side neck behind right ear pinna 1 cm. below mastoid process.

(16) Incised stab wound eliptical/spindle shaped with margins clean cut, regular well defined both angles acute, oblique, medial to lateral downwards of 1.5 x 1 cms. (width at the maximum in centre) x 3 cms. (muscle deep) on back of chest, upper part just 2 cms. right of midline and 16 cms. below C7 spinous process.

(17) Incised stab wound, same as injury no. 16 of 1.5 x 1 cms. (width at maximum in centre) x 2.5 cms. muscle deep, 10 cms. below external injury no. 16 just right of midline oblique, medial to lateral downwards."

P.W.4 Menino had drawn the sketch of the scene of

offence, which is at Exhibit 21. The seized articles were sent for examination to the Central Forensic Science Laboratory with the requisition at Exhibit 51 Colly. The report of the Central Forensic Science Laboratory is at Exhibit 52. According to the report of the Central Forensic Science Laboratory, the knife was stained with blood but the origin could not be determined. In respect of the T-shirts of the appellants, they were found to be stained with human blood of Group 'A'. The blood group of the appellants was found to be 'O Rh. Positive' vide the report of the Medical Officer, at Exhibits 40 and 41. The statement of the witnesses came to be recorded and further to the completion of the investigation a charge-sheet against the appellants came to be filed.

4. The learned trial Court, vide Exhibit 7, framed a charge against both the appellants for offences punishable under Section 302 read with Section 34 of the Indian Penal Code for having caused the death of Dhananjay @ Dhanja Gurappa Rathore. The appellants pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 14 witnesses, which consisted of P.W.5 Raju Naik, P.W.7 Chandru Chauhan, P.W.8 Dastagir Zaudi, P.W.9 Narayan Pawar, P.W.11 Ashok Rathod and P.W.13 Masjid Ergetty as eye witnesses. However, these eye witnesses, since they

had resiled from their statements recorded during investigation, were cross-examined by the prosecution and declared hostile. The learned trial Court relied on the testimonies of P.W.5 and P.W.7 and the other circumstances, to which we will make a reference. The learned trial Court found the following circumstances against the accused:-

(1) The testimonies of two eye witnesses, namely, P.W.5 Raju and P.W.7 Chandru.

(2) Motive for the appellants to commit the murder of deceased Dhananjay.

(3) The accused were found concealing themselves in the bushes when they were apprehended by P.W.12 P.S.I. Onskar.

(4) Recovery of the knife at the instance of appellant no. 1, which was found to be stained with blood and

(5) Seizure of T-shirts of the appellants, which were found to be stained with the blood group similar to that of deceased Dhananjay.

On consideration of the above evidence, the

learned trial Court convicted and sentenced the accused as aforestated and, hence, the appeal at the instance of the accused.

5. Mr. Dessai, learned senior counsel appearing on behalf of the appellants, has urged that the evidence of P.W.5 Raju cannot be relied upon as apart from the fact that P.W.5 Raju was declared hostile, the evidence of P.W.5 does not inspire confidence. Mr. Dessai, the learned senior counsel appearing on behalf of the appellants, has also urged that the prosecution has not been able to establish that the appellants had concealed themselves in the bushes. It is also urged that in view of the evidence of P.W.12 P.S.I. Onskar, it is extremely doubtful if the T-shirts worn by the accused were stained with blood. Lastly, it was submitted that the evidence in respect of discovery of the knife at the instance of appellant no. 1 cannot be relied upon. It was, thus, submitted that the prosecution, apart from establishing motive, had failed to establish and prove any other circumstance.

6. Mr. Sardessai, learned Public Prosecutor appearing on behalf of the State, has supported the Judgment of the learned trial Court and contends that the evidence of P.W.5 Raju is the evidence of a reliable witness. He has also submitted that the prosecution has

been able to prove the other circumstances and, thus, submits that the appeal be dismissed.

7. At this juncture, it would be useful to make a detailed reference to the evidence of P.W.5 Raju. P.W.5 Raju states that he resides at Monte Dongor and he knows both the accused as they were residing at Monte Dongor also. He knew deceased Dhananjay as he too was residing at Monte Dongor. He further states that, on the day of the incident, he was going to his residence at Monte Dongor and when he had reached the place where the Microwave Tower was located, he found a crowd gathered there. Police had come at the spot alongwith accused no. 1 Hanumanth. He also states that he had seen deceased Dhananjay lying on the ground but did not see what had happened to him. He also states that the police took him and accused Hanumanth to the police station. Since P.W.5 Raju had resiled from his statement recorded during investigation, the learned Prosecutor sought permission to cross-examine the witness. In the cross-examination on behalf of the prosecution, P.W.5 Raju stated that his house is at a distance of about half kilometre from the house of the accused. He further stated that, on the day of the incident, he had gone for a walk in the evening. He further stated that the deceased Dhananjay had fallen at a distance of 2 to 3 metres from the edge of the tarred

road. He further stated that when he reached there he saw the appellants and deceased Dhananjay quarrelling. He also states that deceased Dhananjay was a cousin of the accused. He then states that thereafter there was an exchange of blows between the appellants and deceased Dhananjay. Appellant no. 2 Eshwar had a cricket stump, which he hit on Dhananjay and due to the impact the said stump broke. Deceased Dhananjay then fell on the ground and appellant no. 1 Hanumanth dealt a knife blow on the chest of the deceased. The appellant no. 1 Hanumanth then again dealt a blow of knife on the back of Dhananjay. Thereafter many persons came there and seeing that Dhananjay was dead, the appellants fled away. Thereafter the police arrived at the scene. He denied the suggestion that he was not deposing "correctly" as per the instructions of the brother of the appellant no. 1. In the cross-examination on behalf of the appellant no. 1, he states that the police were present at the scene of offence when he went to the scene of offence for the first time. He has admitted that on the day his testimony was to be recorded he met the Police Inspector outside the Court, who read over to him the statement recorded under Section 161 of the Code of Criminal Procedure. He has further admitted that he does not know from where the said stump was brought as initially he did not see the said stump. He further stated that when he saw the

accused, the accused did not have the stump. Similarly he states he did not see the knife in the hands of the accused when he saw them for the first time and does not know from where the accused had brought the knife. He further states that he had not seen the said stump near the body of deceased Dhananjay nor does he recollect into how many pieces the said stump broke. He also states that he had not seen any money fallen at the place where deceased Dhananjay had fallen. He also states he does not know what happened to the knife after the accused inflicted the injuries on Dhananjay. He states that Dhananjay was standing when the knife was hit for the first time and he fell down thereafter. Dhananjay had already fallen down when the injury by knife was caused to his back. He states that after Dhananjay fell down, appellant no. 1 did not deal any blow by knife on him. He further states that the injury by the knife on the back was caused after Dhananjay fell down. He has further admitted that he was told by the Police Inspector to depose as per the statement given to the police. He again states that, after Dhananjay fell down, no injury by knife was caused on his chest. He later on states that appellant no. 2 Eshwar besides assaulting Dhananjay with fist blows, did not do anything else to him. He also states that when he saw the appellants running away he did not see the knife with either of them. He further states that he did not

see any blood on the clothes of the appellants.

8. The scene of offence panchanama, at Exhibit 18, evidences the attachment of one pink colour cricket stump and a yellow colour broken stump in three pieces. The scene of offence panchanama also evidences the attachment of a Rs. 50/- note in a crumpled state.

9. On perusal of the evidence of this witness, it is manifestly clear that this witness cannot be relied upon for sustaining the conviction. Firstly, in his examination-in-chief the witness has clearly stated that he had not witnessed the incident. In the cross-examination on behalf of the prosecution he has admitted having witnessed the incident. Apart from this, this witness was unable to state from where the cricket stump and the knife were brought by the appellants. He further states that he had not seen the stump near the dead body of Dhananjay, which is contrary to the scene of offence panchanama, at Exhibit 18. Similarly he has stated that he had not seen any money fallen at the scene of offence, which, again, is contrary to the recital of the scene of offence panchanama. He also states that when the accused were running away he did not see the knife in the hands of either of the accused. In the examination-in-chief he has denied that he had witnessed the incident but later

on in the cross-examination he has stated that the appellant no. 2 Eshwar apart from giving fist blows had not done anything else. He has also stated that when he went first to the scene of offence, the police were present, whereas the police are alleged to have reached the scene of offence subsequent to the incident. He has also admitted that the police had tutored him to depose as per the statement given to them. Lastly he has stated that he did not see any blood on the clothes of the appellants.

10. Reliance is also placed on the testimony of P.W.7 Chandru. He states that on the day of the incident he had attended a wedding and, thereafter, he returned home. Thereafter, he went for a walk and when he reached near the scene of offence he found a large crowd gathered there, had seen deceased Dhananjay lying on the ground and the police inquiring with the people who had gathered there. This witness too was declared hostile and cross-examined on behalf of the prosecution. In the cross-examination he has admitted that deceased Dhananjay had killed the brother of appellant no. 1. He, however, does not know if after the said incident, the relations of the accused and deceased Dhananjay were strained but they were not on talking terms. The prosecution had not been able to elicit anything worthwhile from the cross-examination of this witness.

The learned trial Judge has relied on the testimony of this witness for the purpose of motive.

11. It is true that the evidence of a hostile witness is not completely washed out, in the sense that merely because a witness is declared hostile, the testimony cannot be thrown overboard. That part of the testimony of the witness which inspires the confidence of the Court can be relied upon. In respect of P.W.5 Raju, according to us, for the reasons stated above, no reliance at all can be placed on his testimony. It is extremely doubtful whether P.W.5 Raju was an eye witness at all. Therefore, according to us, the reasons given by the learned trial Judge for accepting the evidence of P.W.5 Raju are wholly unsustainable. The learned trial Judge at paragraph 18 in respect of P.W.5 Raju has stated as under:-

> "Although P.W.5 Raju Naik has been cross-examined by the prosecution by the prosecution, the version given by him in cross-examination is in conformity with the case of the prosecution. It appears that P.W.5 Raju Naik required only a push to be given to him by way of leading questions to depose the true facts, which he had earlier by and large stated when his statement was recorded by the Police. The name of P.W.5 Raju is found recorded in the F.I.R. lodged by P.W.12 P.S.I. Onskar soon after the murder of the deceased, and therefore, his presence at the scene of offence cannot be doubted."

12. In our considered opinion, the evidence of a witness of a prevaricating state of mind, who swings like a pendulum from one end to the other, should be accepted with great caution. In the examination-in-chief P.W.5 Raju had stated that he had not witnessed the incident and thereafter in the cross-examination on behalf of the prosecution has admitted to have witnessed the incident. A witness who makes two contradictory statements should be relied upon with a great deal of caution and circumspection. Merely because in the report at Exhibit 45 the name of Raju Naik is stated by P.W.12 P.S.I. Onskar as an eye witness is not a sure guarantee that P.W.5 Raju was an eye witness to the incident. It is only on the basis of the intrinsic worth of the evidence that a conclusion can be drawn whether the claim of a witness being an eye witness is to be accepted. We have referred to the cross-examination of P.W.5 Raju in detail. According to us, in view of the various admissions given by him coupled with the fact that he had earlier claimed not to be an eye witness, no reliance at all can be placed on the testimony of P.W.5 Raju. In order to clothe a witness with the status of a reliable witness, the said witness, at the close of the cross-examination, should emerge as a truthful witness whose testimony inspires the confidence of the Court. The admissions given by P.W.5 Raju in the cross-examination on behalf of the

prosecution cannot alone be accepted and the admissions given by him in the cross-examination on behalf of the accused be ignored. After appreciating the admissions in the cross-examination on behalf of the prosecution and the accused, in our considered opinion, P.W.5 Raju does not emerge as a witness on whom implicit reliance can be placed regarding the culpability of the appellants. We have serious doubts whether P.W.5 Raju had witnessed the incident as claimed by him.

13. The statement of P.W.7 Chandru that the appellants and the deceased Dhananjay were not on talking terms on account of the murder of the brother of the appellant no. 1 committed by deceased Dhananjay can be accepted as there is no effective cross-examination on behalf of the appellants/accused.

14. Thus, according to us, the first circumstance relied upon by the learned trial Court, that is, the testimony of P.W.5 Raju Naik, is not proved. However, the prosecution through the testimony of P.W.7 Chandru has been able to establish the motive.

15. In respect of the third circumstance that the accused when apprehended by P.W.12 P.S.I. Onskar were found concealing themselves in the bushes, is seriously challenged on behalf of the appellants. P.W.12 P.S.I.

Onskar in his evidence states that after keeping a police guard near the dead body he proceeded in search of the assailants. He further states 'I found both the accused amongst the bushes at Monte Dongor itself'. In the cross-examination on behalf of the appellants he has given the admission which is reproduced as follows:-

> "I found the accused at a distance of about 50 metres from the dead body where there are houses of the accused and where there are also trees."

P.W.12 P.S.I. Onskar himself does not state that the accused had concealed themselves in the bushes. The accused are found at a distance of about 50 metres from the scene of offence near their own house where there are bushes. We are at a loss to understand as to how this circumstance is an incriminating circumstance against the appellants. The conduct of the accused in being near their own house in the bushes, which is at a distance of 50 metres from the scene of offence itself, is opposed to an inference which the prosecution proposes to draw regarding the guilt of the accused. In any event, P.W.12 P.S.I. Onskar has himself not stated that the accused had concealed themselves in the bushes. Therefore, according to us, the prosecution has not been able to establish the circumstance that the accused had concealed themselves in the bushes. In fact, it is not the case of anybody that the accused had concealed themselves when they were apprehended by P.W.12 P.S.I.

Onskar. The learned trial Judge in paragraph 20 has, however, held:-

> "In my opinion, the fact that both the accused were found concealing themselves amongst the bushes soon after the murder is a circumstance pointing our to their guilt and can be considered as an incriminating circumstance against the accused. I have no hesitation to accept the evidence of P.S.I. Onskar and hold this circumstance duly proved against the accused."

According to us, the learned trial Court was wholly in error in inferring that P.W.12 P.S.I. Onskar has stated that the accused were concealing themselves in the bushes. According to us, a perusal of the testimony of P.W.12 P.S.I. Onskar does not adumbrate that the appellants when apprehended by him were concealing themselves in the bushes. His evidence does not remotely suggest so as the appellants were apprehended near their house, no doubt from the bushes. In the statement under Section 313 of the Code of Criminal Procedure, it is also not put to the appellants that they were concealing themselves in the bushes when apprehended by P.W.12 P.S.I. Onskar. All that is put to them is that P.S.I. Onskar found them amongst the bushes at Monte Dongor and brought them to the police station. Therefore, according to us, the prosecution has also not been able to establish the fact that the accused were found concealing themselves in the bushes

when apprehended by P.W.12 P.S.I. Onskar.

16. The prosecution relies on the recovery of knife at the instance of appellant no. 1. For this purpose the prosecution has examined P.W.6 Arvind, who states that, on 28th May 2000, at about 6.15 p.m., he was called to the Margao Town Police Station alongwith the other pancha. P.W.14 P.I. Mohan brought a person before them. He states that Hanumanth was the person who was brought before them. When called upon to identify Hanumanth, he identified appellant no. 2 Eshwar instead. He then states about appellant Hanumanth volunteering to point out the place where the knife was hidden. Accordingly, the memorandum of the accused, at Exhibit 30 was recorded. The accused then took the police and the panchas to the scene of offence and the accused went into the bushes and, thereafter, produced a knife. The said knife is identified as the knife at Exhibit 3. In the cross-examination on behalf of the accused he has admitted that he had stood as a panch witness at Margao Town Police Station for about 5 to 6 times. He has also admitted that about 7 to 8 years back he was called once or twice for taking photographs in connection with cases. He has admitted that he knows P.W.14 as Police Inspector of Margao Town Police Station. He has also admitted that on that day he did not have any work at the Margao Town Police

Station. He has admitted that Mohan Naik had sent somebody to call him and that when the constable came to call him he was in the market. He has admitted that in the panchanama the word 'hidden' in respect of knife is not used. P.W.14 P.I. Mohan states that he had started interrogating the accused at about 6.20 p.m.. P.W.6 the panch witness Arvind states that he went to the police station at about 6.15 p.m. to act as a panch witness. He further states that the constable had come to call him in the market at about 5.20 or 5.40 p.m.. The accused were arrested, vide arrest panchanama at Exhibit 14, at 6.10 p.m.. Thus P.W.6 Arvind was called to the police station to act as a panch witness in respect of the disclosure of the accused even before the accused were apprehended. Apart from this, P.W.6 Arvind has admitted that he has acted as a panch witness on 5 or 6 occasions and knew P.W.14 P.I. Mohan since last about 12 years. In view of this, according to us, the evidence in respect of the seizure of the knife at Exhibit 3, at the behest of appellant no. 1 does not inspire confidence at all.

17. The last circumstance which the learned trial Judge has held as proved is that the T-shirts worn by the appellants on examination by the Central Forensic Science Laboratory, by its report at Exhibit 52, were found to be stained with human blood of 'A' group. The

blood group of the accused as determined vide Exhibits 40 and 41 is 'O Rh Positive'. A reference may usefully be made to the evidence P.W.12 P.S.I. Onskar when he states in the examination-in-chief itself that he did not notice anything in particular on the clothes of the accused. P.W.5 Raju, for whatever little evidentiary value it has, has stated that the clothes of the accused were not blood stained. The arrest panchanama at Exhibit 14 shows that there are blood stains on the front portion of the T-shirts worn by the appellant no. 1. Similarly there were blood stains on 'many portions' on the front side of the T-shirt worn by the appellant no. 2. If that be the case, the prosecution has not been able to establish as to how P.W.12 P.S.I. Onskar did not notice the blood stains on the clothes of the appellants when he apprehended them in the bushes. So, therefore, according to us, not much importance can be attached to the fact that when effecting the arrest, vide arrest panchanama at Exhibit 14, the T-shirts of the accused were stained with blood similar to the blood group of the deceased. P.W.14 P.I. Mohan was cross-examined on behalf of the accused and it was suggested to him, which he denied, that he had fabricated the evidence of attaching the blood stained clothes of the accused. Be that as it may, the evidence in respect of finding of blood stains of blood group similar to that of deceased Dhananjay does not inspire

confidence.

18. We have given our anxious consideration to the rival submissions and, according to us, the prosecution has not been able to establish any of the circumstances except the circumstance of motive. If the evidence of P.W.5 Raju is left out of consideration, the case of the prosecution rests on circumstantial evidence. The prosecution has to prove each and every circumstance and the proved circumstances should form a complete chain which should exclude every hypothesis of the innocence of the accused and should unerringly point to the guilt of the accused. We have already held that excepting the circumstance of motive, the prosecution has not been able to establish any other circumstance. Howsoever strong the circumstance of motive may be, in the absence of any other circumstance, the circumstance that the accused had motive to commit a crime, is not sufficient for passing the conviction. Therefore, according to us, the prosecution has not been able to prove the offence against the appellants beyond reasonable doubt. According to us, the appellants are entitled to the benefit of doubt.

19. Accordingly, the Criminal Appeal is allowed. The Judgment and Order of the Sessions Judge, South Goa, Margao, dated 20th November 2002, in Sessions Case No.

1 of 2001 convicting the appellants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentencing them to undergo imprisonment for life is, hereby, quashed and set aside and the appellants are acquitted of the charge for which they were tried and convicted. The appellants be released forthwith, if not wanted in any other case.

(P.V. HARDAS)
JUDGE.

(D.G. KARNIK)
JUDGE.

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